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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

Docket No. E-01345A-16-0036

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A HEARING
TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

Docket No. E-01345A-16-0123

IN THE MATTER OF FUEL AND
PURCHASED POWER
PROCUREMENT AUDITS FOR
ARIZONA PUBLIC SERVICE
COMPANY.

INITIAL POST-HEARING
OPENING BRIEF

I. INTRODUCTION.

Freeport Minerals Corporation and Arizonans for Electric Choice and Competition (collectively "AECC") and Calpine Energy Solutions, LLC, Constellation New Energy, LLC and Direct Energy Business, LLC (collectively "Calpine/Constellation/Direct") hereby submit this Joint Post-Hearing Opening Brief in the above-captioned and above-docketed consolidated proceedings ("Instant Proceeding"). AECC and Calpine/Constellation/Direct are among the signatories to the March 27, 2017 Settlement Agreement that was filed in the Instant Proceeding on March 27, 2017.¹ In addition, these parties sponsor the expert witness testimony of Kevin Higgins, including his April 3, 2017

¹ See Exhibit APS-29

1 Direct Testimony in support of Commission approval and adoption of the Settlement
2 Agreement.² As Mr. Higgins observed in his testimony supporting the proposed
3 Settlement Agreement,

4
5 "the final settlement is a compromise negotiated by many parties that
6 reflects a balancing of interests among the very diverse set of stakeholders
that participated in the case."³

7
8 Those stakeholders included AECC, which is a customer group, and
9 Calpine/Constellation/Direct, who are Generation Service Providers ("GSPs") serving
10 AG-1 customers under APS's current AG-1 tariff. In that regard, as Mr. Higgins further
11 testified, his:

12 "...assessment of the Settlement Agreement is from the vantage point of
13 customers in general, with a particular emphasis on the perspective of
14 business customers, including those customers who are interested in
15 continuing to procure their generation from competitive suppliers, i.e.,
GSPs."⁴

16 Accordingly, while AECC and Calpine/Constellation/Direct support the Settlement
17 Agreement as a whole and urge Commission approval and adoption of the same in its
18 entirety, the focus of their Joint Post-Hearing Opening Brief will be on Section XXIII of
19 the Settlement Agreement, and the AG-X program therein proposed as the successor to
20 and replacement of APS's current AG-1 program.

21 **II. BACKGROUND.**

22 The AG-1 program is a "buy-through" program that was included as a component
23 of the Settlement Agreement reached in Arizona Public Service Company's ("APS") 2011
24 rate case, and it was approved by the Commission on May 24, 2012 in its Decision No.

25 ² See Exhibit AECC-3

26 ³ See Exhibit AECC-3 at page 3, lines 5-7

⁴ See Exhibit AECC-3 at page 3, lines 11-15

1 73183 in the form of APS' Experimental Rider AG-1. Under this "buy-through" program,
2 participating large commercial and industrial customers are allowed to obtain an
3 alternative source of generation to serve all or a portion of their power requirements,
4 while remaining as an APS customer with respect to their other electric service needs,
5 including transmission and distribution service. The alternative source of generation is
6 provided to APS by a third-party GSP, and customers participating in the AG-1 program
7 were selected by means of a lottery conducted by APS, pursuant to Program Guidelines
8 developed by APS, and related contractual arrangements involving APS, the customer and
9 the GSP in question pursuant to a "buy-through" arrangement.

10 The AG-1 program was initially established for a 4-year term, commencing on July
11 1, 2012 and terminating on June 30, 2016. At the time that the program was approved in
12 Decision No. 73183, it was anticipated that a subsequent APS rate case would have been
13 initiated and concluded in the interim, and that an evaluation of all stakeholders'
14 experience and assessment as to its continuation could occur within APS's next rate case.
15 However, APS's filing of its subsequent rate case was delayed for approximately a year,
16 and it became apparent in the interim that the aforementioned AG-1 program termination
17 date would be reached before the Commission had an opportunity to evaluate the same
18 within the context of APS's successor rate case. Accordingly, on November 25, 2015, the
19 Commission issued Decision No. 75322 in which it extended the AG-1 program until a
20 final Commission decision in APS's next rate case, which is the Instant Proceeding.

21 Section XXIII of the Settlement Agreement provides for the continuation of a
22 "buy-through" program for large commercial and industrial customers on APS's system,
23 which has been assigned the designation of AG-X. As such, it would succeed and replace
24 the AG-1 program, and no longer would be characterized as "experimental." In that
25 regard, and as discussed below, the AG-X program embodies modifications of, and
26 additions to, the AG-1 program as negotiated during the settlement discussions.

1 **III. DISCUSSION OF AG-X PROGRAM.**

2 **A. Overview.**

3 In APS's evaluation of the AG-1 program, APS reported that program operations
4 such as power scheduling, settlements, information exchanges and billing were generally
5 successful.⁵ In addition, the qualifying customers originally selected through a lottery
6 conducted by APS to participate in the program have continued as participants into the
7 extension period; and, the GSPs selected by those customers to satisfy their generation
8 requirements have remained in business and continuously performed in that role. These
9 are hallmarks of a successful program.⁶ However, APS also reported certain shortcomings
10 in the AG-1 program as originally designed. As discussed in Section III(B) below, the
11 modifications to the AG-1 program included in the AG-X program are intended to satisfy
12 APS' desire to eliminate these shortcomings.

13 **B. The AG-X Program.**

14 As noted in Section II above, the AG-X program is intended to succeed and replace
15 the AG-1 program as a part of the Commission's final decision in the Instant Proceeding.
16 The details of the AG-X program are set forth in Section XXIII of the Settlement
17 Agreement. The following section-by-section discussion includes an identification of the
18 aforementioned modifications of, and additions to, the AG-1 program as reflected in the
19 AG-X Program.

20 **Section 23.1** provides that the capacity reserve charge will be equal to \$5.5398 per
21 kW-month, and will be applied to 100% of the AG-X customer's billing demand. This
22 amount is 60% of the current FERC demand charge of \$9.233 kW, and is four (4) times
23 the 15% capacity reserve charge under the current AG-1 program.

24 A second modification is set forth in **Section 23.4**, in which the Administrative
25

26 ⁵ See Exhibit AECC-3 at page 8, lines 18 -21

⁶ See Exhibit AECC-3 at page 8, line 14 – page 9, line 4

1 Management Fee is increased from the current \$0.60 per MWh to \$1.80 per MWh, or a
2 three-fold increase.

3 **Section 23.5** provides that "a retail energy imbalance protocol specifically
4 designed to measure how well an AG-X Generation Service Provider ('GSP') is matching
5 its retail buy-through customer load on an hourly basis will replace the FERC energy
6 imbalance protocol." This modification is responsive to APS' contention that the FERC
7 protocol was inappropriate inasmuch as it is designed for the wholesale level of service,
8 not retail. In addition, subsections (b) and (c) of Section 23 provide for the imposition of
9 additional financial penalties as compared to AG-1, and include the prospect of
10 terminating qualification as a program GSP in the event that a GSP fails to comply with
11 the requirements of the retail energy imbalance protocol to be developed by APS.

12 **Section 23.6** retains the PSA mitigation feature of the AG-1 program, but modifies
13 the nature of the mitigation for resale of capacity and energy displaced by the AG-X
14 program to be a flat \$1,250,000 per month of off-system sales margins, rather than the
15 current practice of using a pro-rata share of such margins.

16 **Section 23.2** provides that the modified capacity reserve charge and "other
17 parameters will be re-evaluated in APS's next rate case, including whether AG-X should
18 be evaluated as a separate customer class in the cost of service study". In that regard,
19 **Section 12.1** of the Settlement Agreement provides that APS will meet and confer with
20 stakeholders (such as AG-X program participants) prior to filing its next rate case "to
21 discuss the cost of service format"; and, it will make its cost of service study "available to
22 parties...with inputs linked to outputs so that parties can change the inputs as necessary to
23 reflect their position in the case."

24 **Section 23.8** provides that line losses for scheduling AG-X load will be modified
25 to reflect transmission voltage service when applicable.

26 **Section 23.3** retains the AG-1 program feature of a "buy-through" customer

1 returning to service on the basis of APS's cost-of-service rates, but under the AG-X
2 program the advance notification required of the returning customer has been increased
3 from six (6) months to one (1) year. In addition, a customer returning with less than 1
4 year's advance notice, at APS's option, could be charged market-based rates until the 1-
5 year notice period was attained.

6 **Section 23.7** provides that the "buy-through" program on APS's system would
7 remain at 200 MW. However, access to participation within that "cap" would be modified.
8 The prior limitations as to 100 MW from each of the E-32L and E-34/35 rate schedules
9 are eliminated. In their place is a 100 MW tranche initially "allocated to 20 MW single-
10 site customers with load factors above 70% unless not fully subscribed during the
11 solicitation process." In the event that that 100 MW tranche is not fully subscribed during
12 the initial solicitation under the AG-X program, then any unsubscribed MWs are added to
13 the other 100 MW tranche and made available to other customers eligible to participate in
14 the AG-X program, until the second tranche (as so supplemented) is fully subscribed.⁷

15 **Section 23.10** provides that a new lottery would be conducted by APS, if the
16 tranche(s) in question are oversubscribed. Otherwise, participation in the AG-X program
17 would be on a "first come, first served" basis.

18 **Section 23.9** provides for continuation of the AG-1 program's 10 MW minimum
19 aggregation level requirement, though current provisions on the size of single site loads
20 eligible for aggregation under the AG-1 program would remain in place.

21 Finally, and in connection with the above-described modifications of and additions
22 to the AG-1 program structure and content that are designed to address APS's previously
23 expressed concerns, **Section 23.11** provides as follows with respect to the AG-X program:
24 "APS will not propose a deferral of unmitigated costs resulting from AG-X, if any, nor
25 propose the collection of unmitigated costs resulting from AG-X, if any, before or in its

26

⁷ Also, see Tr. 892. L 10-22 (Snook)

1 next rate case."⁸

2
3 **IV. CONCLUSION.**

4 As stated in Section I of this Joint Post-Hearing Opening Brief, AECC and
5 Calpine/Constellation/Direct support the Settlement Agreement as a whole and urge the
6 Commission to approve and adopt the same in its entirety as a part of the Commission's
7 final decision in the Instant Proceeding. Any settlement is a product of compromise and
8 give-and-take by the signatories thereto, and the Settlement Agreement reached in this
9 instance is no exception. AECC and Calpine/Constellation/Direct know that first-hand,
10 having actively participated in the settlement negotiations and drafting of the Settlement
11 Agreement.

12 In that regard, AECC and Calpine/Constellation/Direct did not achieve all of their
13 litigation objectives with respect to the scope and content of a "buy-through" program on
14 APS's system moving forward – which is also the case for other signatories to the
15 Settlement Agreement. Nonetheless, AECC and Calpine/Constellation/Direct ultimately
16 concluded that the AG-X program provided for in Section XXIII of the proposed
17 Settlement Agreement represents an acceptable compromise, and one that is consistent
18 with the public interest.⁹ APS appears to have reached a similar conclusion as well,
19 despite its previously expressed concerns with respect to the AG-1 program, based on its
20 execution and unqualified support of the Settlement Agreement.¹⁰ Significant in that
21 regard is the following excerpt from APS witness Leland Snook's testimony during the
22 evidentiary hearing on April 28, 2017:

23
24 "Q. Does the proposed settlement agreement produce a reasonable
25 resolution of these concerns raised by APS?"

26 ⁸ Also, see Tr. 894. L/ 4-16 (Snook)

⁹ See Exhibit AECC-3 at page 6, line 19 – page 8, line 13

¹⁰ Also, see Tr. 893. L. 1- Tr. 894. L 16; and Tr. 820, L. 16 – Tr. 821, l. 22 (Snook)

1 "A. Yes, the settlement does include a provision, which I think is
2 indicative of what our anticipation is with these changes, that we would not
3 seek in the next case or between now and the next case any unrecovered
4 costs from the [AG-X] program to the extent they would exist. So our
5 anticipation is we've done a much better job of making this a cost based
6 program. But again, we would have to evaluate that in the next case.

7
8 What we've committed to is we wouldn't come back to the Commission and
9 say, you know, we have a problem here, and we need to be reimbursed."¹¹

10 Finally, the fact that not all of the parties signed the proposed Settlement
11 Agreement does not mean that it is not reasonable nor in the broad public interest. Rather,
12 it simply means that not all viewpoints could be accommodated in the broader context of
13 the proposed Settlement Agreement. However, in this instance many viewpoints were
14 accommodated as evidenced by the number of signatories, as well as the broad spectrum
15 of stakeholder interests which they represent.

16 RESPECTFULLY SUBMITTED this 17th day of May, 2017.

17 FENNEMORE CRAIG, P.C.

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¹¹ See Tr. 894, L. 4 - 16 (Snook)

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